

BEFORE THE ARIZONA VETERINARY MEDICAL EXAMINING BOARD

IN THE MATTER OF:) CASE No.: 22-47
GENE NIGHTENGALE, DVM)
HOLDER OF LICENSE No. 1649) CONSENT AGREEMENT
FOR THE PRACTICE OF VETERINARY) FINDINGS OF FACT
MEDICINE IN THE STATE OF ARIZONA,) CONCLUSIONS OF LAW
AND ORDER
RESPONDENT.)

In the interest of a prompt and judicious settlement of the above captioned matter before the Arizona State Veterinary Medical Examining Board ("Board") and consistent with the public interest, statutory requirements and responsibilities of the Board, and pursuant to A.R.S. §32-2201 *et. seq.* and A.R.S. § 41-1092.07 (F)(5), the undersigned party, Gene Nightengale, DVM ("Respondent"), holder of license No. 1629 for the practice of veterinary medicine in Arizona and the Board enter into this Consent Agreement, Findings of Fact, Conclusion of Law and Order ("Consent Agreement") as final disposition of this matter.

CONSENT AGREEMENT

Respondent understands and agrees that:

1. The Board has jurisdiction over Respondent and the subject matter pursuant to A.R.S. §32-2201, *et. seq.*

2. Respondent has the right to consult with an attorney prior to entering into this Consent Agreement. Respondent has a right to a public hearing

1 concerning this case. He further acknowledges that at such hearing she could
2 present evidence and cross-examine witnesses. Respondent irrevocably waives
3 his right to such a hearing.

4 3. Respondent irrevocably waives any right to rehearing or review or to any
5 judicial review or any other appeal of these matters.

6 4. The Consent Agreement, once approved by the Board and signed by the
7 Respondent, shall constitute a public record, which may be disseminated as a
8 formal action of the Board. Sufficient evidence exists for the Board to make the
9 Findings of Fact and Conclusions of Law set forth in the Consent Agreement.

10 5. Respondent acknowledges and understands that this Consent
11 Agreement will not become effective until the Board approves it and it is signed
12 by the Board's Executive Director. Respondent acknowledges and agrees that
13 upon signing and returning this Consent Agreement to the Board's Executive
14 Director, Respondent may not revoke his acceptance of the Consent
15 Agreement or make any modifications to the document, regardless of whether
16 the Consent Agreement has been issued by the Executive Director.

17 6. If any part of the Consent Agreement is later declared void or otherwise
18 unenforceable, the remainder of the Order in its entirety shall remain in force
19 and effect.

20 7. Respondent acknowledges that any violation of this Consent Agreement
21 constitutes unprofessional conduct pursuant to A.R.S. § 32-2232 and may result
22 in disciplinary action pursuant to A.R.S. § 32-2234.

23 8. This Consent Agreement and Order is effective on the date signed by the
24 Board.
25

DATED this 7th day of MARCH 2022.


Gene Nightengale, DVM

FINDINGS OF FACT

1. The Board is the duly constituted authority for the regulation and control of the practice of veterinary medicine in the State of Arizona.

2. Respondent holds license No. 1629 for the practice of veterinary medicine in the State of Arizona.

3. At the October 20, 2021, Arizona Veterinary Medical Examining Board Meeting, the Board opened an investigation regarding Respondent's non-compliant premises as exhibited at the premises inspections conducted on November 6, 2019 and September 28, 2021. At the November 6, 2019 inspection multiple potential violations were found; afterwards Respondent reported the potential violations had been corrected. However, at the September 28, 2021 re-inspection, repeat potential violations were identified. Those potential violations were:

- a. **A.A.C. R3-11-502(K)(3)(h)** Need decremented amounts in/on the Controlled Drug Dispensing Logs as well as correct balances on hand;
- b. **A.A.C. R3-11-50 (H)(3)** Need consistency recording heart rate and respiration rate every 15 minutes or less after anesthesia is administered.

1 4. A Letter of Inquiry was sent to Respondent asking him to respond to the
2 allegations of premises non-compliance. Respondent responded stating that
3 after the 2019 premises inspection, policies were instituted to improve their
4 record keeping. These improvements were maintained throughout 2019, 2020,
5 and early 2021. However, in early 2021 it became increasingly difficult to
6 maintain the implemented changes due to staff turnover, Covid quarantine
7 requirements and illness issues, maternity leave and injury, which resulted in staff
8 shortages for an extended period of time.

9 5. Respondent further stated that he suspects that the lack of recording
10 pulse and respiration rate every 15 minutes while a pet was under anesthesia
11 was an isolated incident. He believes that the patient was monitored properly
12 as his technical staff are trained to assess pulse and respiration by auscultation
13 immediately prior to and after induction and intubation. The patient is
14 continuously monitored by pulse oximetry. Respondent stated that he cannot
15 explain why the parameters were not recorded within the 15 minute time
16 period for the patient in question. It is practice protocol to continuously monitor
17 and record data every five (5) minutes on each patient and they do their best
18 to adhere to this policy. Respondent explained that unfortunately there are
19 circumstances that arise from time to time that may interfere with their
20 intentions.

21 22 CONCLUSIONS OF LAW

23 6. The Findings of Fact constitutes a violation of **A.R.S. § 32-2232 (21)** as it
24 relates to **A.A.C. R3-11-502(K)(3)(h)** failure to record the decremented amounts
25

1 in the Controlled Drug Dispensing Logs and maintaining correct balances on
2 hand.

3 7. The Findings of Fact constitutes a violation of **A.R.S. § 32-2232 (21)** as it
4 relates to **A.A.C. R3-11-502(H)(3)** failure to consistently record the animals' heart
5 rates and respiration rates every 15 minutes or less after anesthesia is
6 administered.

7 **ORDER**

8 1. Based upon the foregoing Findings of Fact and Conclusions of Law it is
9 **ORDERED** that Respondent, License No. 1649, pay a civil penalty of **one**
10 **thousand dollars (\$1000.00)** – five hundred dollars (\$500.00) per violation, in the
11 form of a **cashier's check** or **money order** made payable to the Arizona
12 Veterinary Medical Examining Board. The civil penalty is to be paid within 90
13 days of the effective date of the Consent Agreement.

14 2. Respondent shall obey all federal, state and local laws/rules governing
15 the practice of veterinary medicine in this state.

16 3. Respondent shall bear all costs of complying with this Consent
17 Agreement.

18 4. This Consent Agreement is conclusive evidence of the matters described
19 and may be considered by the Board in determining an appropriate sanction
20 in the event a subsequent violation occurs. In the event Respondent violates
21 any term of this Consent Agreement, the Board may, after opportunity for
22 Informal Interview or Formal Hearing, take any other appropriate disciplinary
23 action authorized by law, including suspension or revocation of Respondent's
24 license.

25 ISSUED THIS 11th DAY OF March, 2022.

FOR THE BOARD:
ARIZONA STATE VETERINARY MEDICAL EXAMINING BOARD

Jim Loughhead, Chairperson

By 
Victoria Whitmore, Executive Director

Original of the foregoing filed
This 11th day of March 2022 with:

Arizona State Veterinary Medical Examining Board
1740 W. Adams St, Ste. 4600
Phoenix, Arizona 85007

Copy of the foregoing mailed by Certified, return receipt mail
This 11th day of March, 2022 to:

Gene Nightendale, DVM
Address on file
Respondent

By: 
Board Staff